

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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| SHEPP ELECTRIC COMPANY, INC., |) | CASE NO. 1:20-cv-00452-SO |
| |) | |
| Plaintiff, |) | JUDGE SOLOMON OLIVER, JR. |
| |) | |
| vs. |) | DEFENDANTS' RESPONSE TO |
| |) | PLAINTIFF'S MOTION FOR A |
| RUSTY BOYER, <i>et al.</i> , |) | CONTINUANCE |
| |) | |
| Defendants. |) | |

Plaintiff Shepp Electric Company, Inc. ("Shepp Electric") now seeks a sixty-day continuance of all events scheduled in this case, including the submission of Confidential Mediation Statements due on November 23, 2021 and the Mediation scheduled for November 30, 2021. (ECF No. 75.) Defendants, Rusty Boyer and Generator One, LLC, are fully prepared to proceed with the Mediation as scheduled, and question Shepp Electric's reasons for seeking a seventh continuation of the mediation proceedings in this action:

- When prior counsel was representing Mr. Boyer, counsel and the parties agreed to a mediation to take place on October 6, 2020. (ECF No. 15).
- The parties jointly moved for a continuance due to discovery delays attributable to counsel for Shepp Electric's surgery, and the Court entered an order continuing the initial Mediation date to December 9, 2020. (9/25/2020 Non-Document Order).
- Shepp Electric then requested a second continuance (ECF No. 26), which was unopposed, and the Court continued the Mediation to February 22, 2021. (11/24/2020 Non-Document Order).
- At Shepp Electric's request, which was unopposed, the Mediation was continued a third time to April 21, 2021. (2/18/2021 Non-Document Order).
- At Shepp Electric's request (ECF No. 29), which was unopposed, the Mediation was continued a fourth time to June 23, 2021. (4/6/2021 Non-Document Order).

- At Shepp Electric's request (ECF No. 37), which was unopposed, the Mediation was continued a fifth time to September 1, 2021. (4/6/2021 Non-Document Order).
- At Shepp Electric's request, which was unopposed, the Mediation was continued a sixth time to November 30, 2021. (8/31/2021 Non-Document Order).

Shepp Electric instituted this action on February 28, 2020, and has since conducted the following discovery:

- Written discovery requests upon Mr. Boyer;
- Document subpoenas upon GoDaddy.com and Mattingly Brothers, Inc.; and
- Depositions of Mr. Boyer, John Mattingly, and Jean Mattingly.

The only discovery sought by Shepp Electric, which is being opposed, is the subpoena *duces tecum* issued upon Daniel Bialek, CPA, seeking disclosure of extensive personal, private and confidential tax records of Mr. Boyer, Generator One, and non-party John Mattingly, as well as related financial statements, and documents concerning the general assets of those parties, all of which bear no reasonable nexus to this lawsuit.

On the other hand, after Mr. Boyer conducted written discovery, Shepp Electric terminated the attempted deposition of Craig Shepp and the attempted Civ. R. 30(b)(6) deposition of Shepp Electric and is seeking an order from this Court to foreclose Mr. Boyer from completing these depositions. Despite this obvious disparity of discovery in favor of Shepp Electric and to the disadvantage of Mr. Boyer and Generator One, Defendants are prepared to participate in meaningful settlement discussions. It is baffling to Defendants that Shepp Electric could represent the willingness and ability to participate in mediation proceedings on October 6, 2020, and now profess the inability to participate in mediation proceedings scheduled more than one year later on November 30, 2021.

Nevertheless, since mediation is a voluntary proceeding, there appears to be little benefit to require Shepp Electric to proceed with the mediation set for November 30, 2021. Defendants, however, are becoming increasingly frustrated by Shepp Electric's never-ending requests for sixty-day continuances. Defendants respectfully propose that the Court vacate the November 30, 2021 mediation, and authorize the Magistrate Judge to address the outstanding discovery issues. Presumably, once the pending discovery issues are resolved, the parties can determine whether Shepp Electric is willing to participate in mediation proceedings or whether this case needs to be set for trial.

Respectfully submitted,

/s/ Theodore M. Dunn, Jr.

THEODORE M. DUNN, JR. (0024195)

dunn@buckleyking.com

DAVID A. KUNSELMAN (0073980)

kunselman@buckleyking.com

Buckley King LPA

1400 Fifth Third Center

600 Superior Avenue East

Cleveland, OH 44114-2652

(ph.) 216-685-4743 • (fax) 216-579-1020

*Counsel for Defendants and
Counterclaim Plaintiffs, Rusty Boyer
and Generator One, LLC*

CERTIFICATE OF SERVICE

I certify that on November 19, 2021, the foregoing Defendants' Response to Plaintiff's Motion for a Continuance was filed electronically in the above-captioned action. Notice of this filing will be sent by operation of the Court's electronic filing system to Plaintiff's counsel, who may access this filing through the Court's system.

/s/ Theodore M. Dunn, Jr.

THEODORE M. DUNN, JR. (0024195)
*Counsel for Defendants and
Counterclaim Plaintiffs, Rusty Boyer
and Generator One, LLC*